

## REMARKS

Claims 1-22 are currently pending in this application. The Office has rejected claims 1-18 and 20-22 under 35 USC § 103(a) as being unpatentable by Ogasawara (U.S. Pat. No. 6,577,861) in view of Ortiz et al. (U.S. Pub. No. 2002/0042774; hereafter “Ortiz”). The Office rejected claim 19 under 35 USC § 103(a) as being unpatentable over Ogasawara in view of Ortiz and further in view of Sloane (U.S. Pat. No. 5,918,211). This is a final Office action and is responsive to Applicant’s communication filed on or about July 16, 2008. A Request for Continued Examination is being filed contemporaneously with this reply.

### Amendments to the Claims

Applicant requests that the amendments to the claims be entered into the application. No new subject matter is being entered. The specification contains support for the amendments e.g., page 9, second paragraph.

### 103(a) Rejection of Independent Claims 1, 3, 4, 20 and 22 by Ogasawara & Ortiz

#### *Re: Claim 1:*

Applicant requires “a point-of-sale computer at a checkout counter for processing a purchase of items presented to the checkout counter for scanning and identification by the point-of-sale computer.” The Office asserts that Ogasawara discloses these requirements and cites col. 1, line 65 – col. line 6. Applicant disagrees. Ogasawara discloses, “a personal shopping system (PSS) wherein the purchaser carries a scanner embedded hand-held terminal within a store. Bar codes of products to be purchased are scanned with the hand-held scanner. ... Payment for the scanned products is accomplished at a checkout counter in a conventional manner.” A hand-held terminal that a purchaser carries around within a store is by its very description not located at a checkout counter and is not a point-of-sale computer, as required by Applicant. Furthermore, a hand-held terminal carried by the purchaser does not become a point-of-sale computer just because it is brought into proximity with a checkout counter. It is still a purchaser’s hand held terminal and not a point-of-sale computer. The Office further

states “A customer can well bring all of their items in a shopping cart and do the scanning at the check out counter.” (Office Action, page 2 – page 3.) This assertion is mere supposition by the Office as the actions are not disclosed by Ogasawara nor are they consistent with the intended use of the device. Even if the action were disclosed, bringing the hand-held terminal in proximity to a checkout counter does not turn it into a point-of-sale computer. Clearly, Ogasawara’s hand-held terminal that a purchaser carries around within a store is not the same as or equivalent to a point-of-sale computer at a checkout counter. The passage cited by the Office fails to disclose the required elements.

Applicant requires “a customer interface device at the checkout counter for alerting a customer to the existence of a promotion for an item scanned at the checkout counter and for transferring details of the promotion to the point-of-sale computer.” The Office asserts that Ogasawara discloses these requirements and cites col. 7, lines 10-24, and specifically calls attention to “transmit promotional information”. Applicant disagrees with this assertion. The text cited by the Office discloses using a wireless telephone as a personal shopping terminal. Ogasawara states “When a customer scans an item [using the telephone], the telephone sends the scanned bar code information to the server. The server then preferably returns a description of the item and price information. This item description and price information is displayed on the telephone’s display.” (Col. 5, lines 38-43.) Ogasawara also discloses “optionally, the server may additionally transmit other information, such as promotional information ....” (Col. 7, lines 20-21.)

In Ogasawara’s embodiment, the wireless telephone has a bar code scanner attached to it or built into it and it is the telephone that scans the items using the attached scanner. The information scanned by the telephone is then sent to a server and item information is returned. However, Applicant requires the items to be scanned by a point-of-sale computer located at the checkout counter. A wireless telephone is not a point-of-sale computer located at a checkout counter. Furthermore, Applicant requires, “a customer interface device at the checkout counter for alerting a customer to existence of a promotion for an item scanned at the checkout counter by the point-of-sale computer.” There are clearly two elements present: a customer interface device and a point-of-sale computer. The Office is, by its assertion, implying that the wireless telephone is both

elements. This clearly does not satisfy the Applicant's requirements. Therefore, the passage cited by the Office fails to disclose all of the required elements.

For any or all of the above reason, the Office has failed to establish a *prima facie* case of obviousness because it has failed to show that the prior art of record shows or make obvious all the elements of Applicant's claimed invention. Therefore, the rejection is improper and Applicant requests that it be withdrawn.

Re: Claim 3:

Applicant requires "determining that the customer is presenting items for identification and purchase at a checkout counter." The Office asserts that Ogasawara discloses these elements and cites col. 5, line 47 for support. Applicant disagrees. The passage cited by the Office discloses a "checkout" function, which is the act of paying for the items that have already been scanned, in this case by using a wireless telephone. The passage does not teach identifying items for purchase but instead teaches how the telephone and checkout terminal can identify each other. This passage fails to show the elements required by Applicant.

Applicant requires "receiving item identification information at the customer interface device for items presented at the checkout counter for purchase." The Office asserts that Ogasawara discloses these elements and cites col. 5, lines 38-41. Applicant disagrees. The cited passage discloses a wireless telephone that functions as a personal shopping terminal with a bar code reader that scans items. The telephone then sends scanned bar code information from items to a server and receives information from the server on the items. This is not what Applicant requires. The telephone is both scanning items and receiving information about the items. However, Applicant requires a customer interface device for receiving item information for item presented at the checkout counter for purchase. The items are not presented to customer interface device for purchase as is taught by this passage from Ogasawara. Therefore, this passage fails to show the elements required by Applicant.

Applicant requires "displaying a message to the customer informing the customer that the customer is to receive the promotion for an item presented at the checkout counter for purchase." The Office asserts that Ogasawara discloses these elements and

cites col. 7, lines 10-23. Applicant disagrees. This cited passage teaches the wireless telephone scans the items and displays promotional information. However, Applicant requires the items to be presented to the checkout counter for purchase. This element is missing from the cited passage. Therefore, this passage fails to show the elements required by Applicant.

For any or all of the above reason, the Office has failed to establish a *prima facie* case of obviousness because it has failed to show that the prior art of record shows or make obvious all the elements of Applicant's claimed invention. Therefore, the rejection is improper and Applicant requests that it be withdrawn.

*Re: Claim 4, 20 and 22:*

The rejections for these claims are improper for one or more of the same reasons given above for the other independent claims.

#### 103(a) Rejection of Independent Claim 19 by Ogasawara in View of Sloane

Sloane teaches a system and method for influencing and potentially altering a consumer's purchase decisions at the point-of-purchase in a retail store using a portable bar code scanner. (See Sloane abstract.) Sloane's teachings also fail to show or suggest the above elements missing from the passages cited by the Office.

The Office has failed to establish a *prima facie* case of obviousness because it has failed to provide evidence that the references show or suggest all the required elements of Applicant's claimed invention. The rejection is therefore improper and Applicant requests that it be withdrawn.

#### Dependent Claims

The remaining dependent claims are allowable for at least the same reasons as the corresponding independent claim.

## CONCLUSION

Applicant asks the Office to reconsider this application and allow all pending claims. Please charge any fees that might be due, excluding the issue fee, to deposit account 14-0225.

Respectfully submitted,

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(Filed Electronically)

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